SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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FOX VARIAN,

Plaintiff,

-against-

KENNETH EINHORN, PhD, CARMEL PSYCHOLOGICAL ASSOICIATES, P.C., SIMON H. CHIN, M.D. and CAREMOUNT MEDICAL, P.C.

Defendant.

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Index No.: 61150/2023

EXPERT'S AFFIDAVIT

JOSEPH M. SERLETTI, M.D., a physician duly licensed to practice medicine in the States of New Jersey and Pennsylvania, hereby affirms, under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a Court of law:

1. I am a physician licensed to practice medicine in the States of New Jersey and Pennsylvania and am Board Certified in Plastic Surgery. I received a medical degree from the University of Rochester School of Medicine. I completed an Internship in Surgery and Plastic Surgery at the University of Rochester Medical Center, where I was Chief Resident in Plastic Surgery. I then completed a Fellowship in Craniofacial Surgery at Johns Hopkins University Medical Center. I am presently Chief, Division of Plastic Surgery, at the Hospital of the University of

Pennsylvania, and Chief of Plastic Surgery for the University of Pennsylvania Health System. I previously served as Chairman of the Division of Plastic Surgery at the University of Rochester School of Medicine and Dentistry, and Chief of Plastic Surgery at Strong Memorial Hospital, Rochester, New York. I have served as a Director, Vice-Chair, Chair-elect, and Chair of the American Board of Plastic Surgery. I am presently an Attending Surgeon at multiple hospitals is the States of Pennsylvania and New Jersey.

2. This matter was commenced by plaintiff, Varian Fox, formerly known as Isabella Basile, who was 16 years old when she presented to defendant, Simon H. Chin, M.D., a board certified plastic surgeon, for a gender reassignment double mastectomy, known as "top surgery". At the time, she[1] identified as a transgender male. She had been under the treatment of co-defendant, Dr. Kenneth Einhorn, who provided psychological clearance for the surgery. Dr. Chin performed the surgery on December 16, 2019. Plaintiff alleges the surgery was psychologically contraindicated and also that Dr. Chin failed to remove sufficient breast tissue, requiring additional surgery. Plaintiff is currently identifying as a female.

3. Over the course of my career, I have performed countless top surgeries on patients born female who identified as male. I currently average two top surgeries

[1] The pronouns "she/her" will be used throughout since the plaintiff now identifies as a female. At the time of her treatment with Dr. Chin plaintiff identified as male and her preferred pronouns were "he/him".

per month and have performed over 100 top surgeries over the past four years. I am, thus, fully familiar with the roles of both the plastic surgeon and psychologist with respect to these surgeries. The role of the psychologist is to clear the patient for surgery, which Dr. Einhorn did here by providing a letter of support that the plaintiff met the psychological requirements for top surgery. It is appropriate, and in accordance with the standard of care, for the plastic surgeon to defer to the psychologist in this regard. The role of the plastic surgeon is to obtain informed consent for the surgery and perform the surgery.

4. I submit this affirmation in support of the motion for summary judgment dismissing plaintiff's complaint against defendant, SIMON H. CHIN, M.D. and his employer, CAREMOUNT MEDICAL, P.C. It is my opinion, to a reasonable degree of medical certainty, Dr. Chin did not deviate from plastic surgical standards of care in rendering treatment to the plaintiff, FOX VARIAN. Moreover, it is my opinion, to a reasonable degree of medical certainty, the treatment provided by Dr. Chin did not proximately cause the damages alleged in this lawsuit. My opinion is based upon review of the pertinent medical records, inclusive of the records of Dr. Chin and CareMount Medical, P.C.; the records of Dr. Einhorn; the records of Northern Westchester Hospital; and the records of subsequent plastic surgeon, Laurel Chandler, M.D. My opinion is also based upon my review of the bills of particulars, all relevant deposition testimony and my expertise in the field of

Plastic Surgery, specifically in the performance of top surgeries. All of my opinions are to a reasonable degree of medical certainty.

The Claims and Allegations

5. The crux of the plaintiff's claim against Dr. Chin is that he should not have performed top surgery on December 16, 2019 because Dr. Einhorn's diagnosis was body dysmorphia, and not gender dysmorphia, which is a prerequisite for top surgery. Plaintiff further claims Dr. Chin did not remove enough breast tissue and skin during surgery, requiring a revision surgery to remove *more* breast tissue and skin by subsequent surgeon, Dr. Chandler, who performed surgery in mid-January of 2021. At the time of Dr. Chandler's surgery the plaintiff still identified as a male, was happy without breasts, and did not regret her decision (*see* Transcript of EBT Testimony of Plaintiff at pgs. 146-147, 150). Plaintiff testified she did not regret her decision and begin "de-transitioning" (to identify as a female again) until December 2022 – January 2023, three years after Dr. Chin's surgery (*Id* at pg. 167).

6. In the bills of particulars, plaintiff alleges Dr. Chin deviated from standards of care in:

- failing to take a proper history and appreciate the significance of and act upon the history elicited;
- failing to assure that the plaintiff lived as her preferred gender for a sufficient length of time before performing surgery;
- failing to assure that the plaintiff lived as her preferred gender for a sufficient time after hormone therapy before performing surgery;
- performing surgery before the plaintiff tried hormone therapy;

- improperly performing surgery;
- failing to take into account the plaintiff's pre-existing psychological and cognitive conditions;
- performing a contraindicated surgery;
- incorrectly performing the surgery;
- failing to remove enough breast tissue;
- failing to remove enough skin;
- failing to discuss the plaintiff's ability to consent to the procedure with other physicians, including co-defendants;
- failing to obtain appropriate letters of behavioral health clearance from a qualified provider;
- performing a procedure on a minor without proper informed consent;
- performing surgery without a diagnosis of gender dysphoria;
- failing to discuss transition process;
- failing to discuss surgical goals;
- failing to perform a mental health assessment prior to surgery;
- failing to consult plaintiff's mental health professionals;
- operating without a well-documented diagnosis of gender dysphoria;
- operating without co-existing mental health concerns being controlled; and
- utilizing improper surgical technique.

(*see* plaintiffS" Bills of Particulars at ¶ 1).

7. It is my opinion, to a reasonable degree of medical certainty, all the allegations in plaintiff's Bills of Particulars are without merit. A licensed psychologist, co-defendant, Dr. Einhorn, cleared the plaintiff for surgery, referred her to Dr. Chin to perform the surgery and provided a letter supporting the surgery. Further, Dr. Einhorn, although his letter of support states the diagnosis as body dysmorphia, clearly described in his letter a patient with gender dysmorphia. It was, therefore, reasonable for Dr. Chin to believe the plaintiff had gender dysmorphia based upon Dr. Einhorn's letter. Dr. Einhorn testified at his deposition he believed

the plaintiff did, indeed, have gender dysmorphia and he listed the diagnosis as body dysmorphia for insurance/billing purposes (*see* Transcript of EBT of Dr. Einhorn at pgs. 69, 136). Given Dr. Einhorn's testimony, had Dr. Chin called Dr. Einhorn prior to surgery, Dr. Einhorn would have told him the diagnosis was gender dysmorphia. It was appropriate, and in accordance with the standard of care, for Dr. Chin to defer to Dr. Einhorn in this regard.

8. Further, the plaintiff's and the plaintiff's mother's testimonies, as outlined in detail below, support a diagnosis of gender dysmorphia for a sufficient amount of time prior to surgery. Dr. Chin's note of October 15, 2019 states the plaintiff advised him she wanted top surgery for 3-4 years "and to undergo gender reassignment in order to align himself[2] sexually" (*see* Dr. Chin's office note of October 15, 2019). The plaintiff testified that she was 12 or 13 years old when she first told a psychologist that she sometimes felt like a boy, and sometimes felt like a girl, which was 3-4 years prior to Dr. Chin's surgery, corroborating Dr. Chin's note (*see* Transcript of EBT Testimony of Plaintiff at pgs. 159-160). She further testified she told Dr. Einhorn she felt like a boy in the fall of 2018, one full year prior to Dr. Chin's surgery (*Id* at pg. 95, 97). Being a girl gave the plaintiff so much anxiety that she told multiple people on multiple occasions that she would kill herself if she did

[2] Dr. Chin used the pronoun "him" in his notes because at that time the plaintiff treated with him she identified as male and this was her preferred pronoun (*see* Transcript of EBT Testimony of Dr. Chin at pg. 35).

not have top surgery (*Id* at pgs. 104-106, 108, 111). Plaintiff's mother corroborated her daughter's threats to kill herself, fearing she might commit suicide if she did not consent to the top surgery (*see* Transcript of EBT Testimony of Claire Deacon at pgs. 68-70, 108, 110, 123, 141-143). Ms. Deacon also testified that her daughter first advised her she wanted to be a male "possible at [age] 14…the end of being 14 into 15," which would be well over a year before Dr. Chin's surgery (*Id* at pg. 155).

9. It is also my opinion, to a reasonable degree of medical certainty, Dr. Chin's technical performance of the surgery was within standards of care. He removed the appropriate amount of breast tissue and skin and did not fail to remove enough breast tissue and skin. He also provided proper informed consent and obtained the plaintiff's mother's consent for surgery since the plaintiff was a minor.

10. For the following reasons, defendants are entitled to summary judgment, dismissing this case in its entirety.

The Pertinent Medical Treatment

11. The plaintiff first presented to Dr. Chin on October 15, 2019. The plaintiff testified that Dr. Einhorn referred her to Dr. Chin (*see* Transcript of EBT Testimony of Plaintiff at pgs. 113, 122-123). She testified Dr. Einhorn advised her Dr. Chin had performed top surgery on another of his patients and she was satisfied with the result (*Id* at pgs. 113-114). Dr. Einhorn provided a letter, dated October 14,

2019, in support of top surgery, which plaintiff testified was sent by Dr. Einhorn directly to Dr. Chin (*Id* at pg. 188). Dr. Einhorn's letter states as follows:

> I have been working with B. Rowan Basile since June 23, 2017. At that time she was diagnosed with F84.0 Autism Spectrum Disorder. For the next 18 months we worked together on anxiety management strategies with moderate success as evidenced by improved summer activity and then school attendance. In November, 2018 B. Rowan shared that she felt she was transgendered and felt much more comfortable being identified as a male. That November, Rowan enjoyed a huge boost in his ability to manage his anxiety as evidenced by successful participation in a Panas Players Production. However, as the fall semester continued, many of his anxiety symptoms returned. He struggled with being misgendered by both peers and staff. In addition, he began reporting anxiety when he looked in the mirror and saw his breasts while he dressed.
>
> At this time, I have diagnosed him with F40.10 Social Phobia Unspecified and F45.22 Body dysmorphic disorder. Throughout treatment, he has attended weekly sessions. We are currently working on three therapeutic goals: developing an outcome focus, improving his emotional regulation skills, and eating healthy. His ongoing body dysmorphia remains a barrier to treatment. Moreover, the significance of the barrier his struggle with his body has presented has increased in recent months as he has not been able to consistently wear his binder due to rib pain. Instead, he has worn oversized clothing and hoped that no one notices. Though often that is the case, just 10 days ago, he reported that he was bumped into by a female peer during play practice where his female peer felt his breasts as she caught herself leaving him extremely anxious that she would, "out," him.
>
> Given the above, I am in support of Rowan undergoing top surgery as I believe it would help him present to others as he wishes to.

(*see* Letter of Support of co-defendant, Kenneth Einhorn, Ph.D).

12. On October 15, 2019, Dr. Chin described plaintiff as a 16 year old biological female who wanted double mastectomies and to "undergo gender reassignment in order to align himself sexually" (*see* Dr. Chin's office note of October 15, 2019). Dr. Chin noted, "[h]e started about this for 3-4 years and has guarded this through, and has the support of his parents to now go through this as well" (*Id*). Dr. Chin further wrote plaintiff "has gone through a lot of psychological anguish while he has been trying to transition" and that "[h]e has already done his research and is expecting a short scar breast reduction surgery".

13. Upon examination, Dr. Chin described B cup breasts with a significant amount of skin and fibrous tissue (*Id*). Dr. Chin discussed treatment options with plaintiff, which included a possible two-staged process, with liposuction and possible skin resection, versus a one-stage process, which was a short scar breast reduction (*Id*). Dr. Chin further documented the informed consent discussion as follows:

> He understands that there will be scars, a vertical scar in particular, which may be permanent on the male chest. Risks and benefits explained. Risks and benefits explained including bleeding, infection, seroma, hematoma, hypertrophic scarring, keloiding, suture abscess, asymmetry, need for further surgery, wound separation, prolonged healing, need for activity restriction, DVT [deep vein thrombosis], PE [pulmonary embolism].

(*Id*).

14. The plaintiff returned to Dr. Chin for a second pre-operative visit on November 4, 2019 (*see* Dr. Chin's office note on November 4, 2019). Dr. Chin noted the plaintiff's mother was present, who gave her permission for the surgery (*Id*). Dr. Chin wrote the plaintiff's insurance company approved "gender reassignment surgery" (*Id*). Dr. Chin noted, again, an informed consent discussion in which he discussed a stage one versus a stage two procedure and the risks of the procedure (*Id*). Dr. Chin discussed with the plaintiff and her mother the possibility of a second procedure for "further skin excision" (*Id*). Dr. Chin testified he advised of the importance of keeping the nipple viable and in order to do so some tissue needed to be left to ensure viability (*see* Transcript of EBT Testimony of Dr. Chin at pg. 52).

15. Dr. Chin testified that he has performed five to ten top surgeries per year going back to 2008 (*see* Transcript of EBT Testimony of Dr. Chin at pg. 45). He testified that it is the role of the mental health professional to make the diagnosis of gender dysmorphia (*Id* at pg. 26). His role as the plastic surgeon was to confirm and corroborate the diagnosis (*Id*).

16. Dr. Chin testified that the body of Dr. Einhorn's letter supported a diagnosis of gender dysmorphia (*Id* at pg. 28-29, 33-34). Dr. Einhorn's letter states: (a) the plaintiff had an at least 13-month history prior to top surgery of feeling transgendered and identifying as a male, (b) there was a well-documented history of anxiety and psychological anguish in being misgendered by peers and school staff,

(c) plaintiff reported anxiety when she looked in the mirror and saw her breasts, (d) plaintiff wore a binder to flatten her chest to appear masculine, and (e) when she was unable to wear the binder due to rib pain she felt extremely anxious at being exposed, or "outed", as a female (*Id* at pg. 28-29, 33-34).

17. Dr. Chin corroborated Dr. Einhorn's diagnosis by eliciting that the plaintiff felt she was transgendered for 3-4 years, "has gone through a lot of psychological anguish while he has been trying to transition" and that "[h]e has already done his research and is expecting a short scar breast reduction surgery" (*see* Dr. Chin's office note of October 15, 2019). Plaintiff also advised Dr. Chin that she had been binding herself for at least a year (*see* Transcript of EBT Testimony of Dr. Chin at pg. 36). Further, Dr. Chin scheduled a second post-operative visit to allow plaintiff to ruminate about what was discussed in order for her and her mother to decide if the surgery is what she really wanted (*Id* at pg. 52).

18. As noted above, the plaintiff testified that she that she was 12 or 13 years old when she first told a psychologist that she sometimes felt like a boy (*see* Transcript of EBT Testimony of Plaintiff at pgs. 159-160). This was 3-4 years prior to Dr. Chin's top surgery of December 16, 2019. The plaintiff's mother testified her daughter first advised her she wanted to be a male "possible at [age] 14…the end of being 14 into 15," which would be well over a year before Dr. Chin's surgery (*Id* at pg. 155). In responding to a question about advising Dr. Einhorn about being afraid

of menstruation in 2017 and 2018, the plaintiff responded it was "anxiety provoking" and it was due to "a lot of trauma" as a result of "having a female body" (*Id* at pg. 73). In mid-October/early November of 2018 the plaintiff changed her name from Isabella Basile, to Gabriel because it was masculine (*Id* at pgs. 79-81). She went by the name Gabe (*Id*). In December of 2018, one year before Dr. Chin's surgery, the plaintiff decided to wear a binder to appear more masculine (*Id* at pgs. 84-85). She wore the binder until shortly before top surgery (*Id* at 85-86). She wore the binder even though it was painful to wear and she risked breaking her ribs (*Id* at 86). In late November of 2018, the plaintiff also cut her hair short to appear more masculine (*Id* at pg. 93-94). Plaintiff testified she advised Dr. Einhorn she wanted to transition (*Id* at pg. 95-96). She initially testified this conversation took place in late November of 2018, but then testified she did not remember when she had the conversation (*Id* at pg. 96). During this conversation she told Dr. Einhorn she felt like a boy (*Id* at pg. 96). Plaintiff confirmed she started to feel like a boy in the fall of 2018 (*Id* at pg. 97). Plaintiff changed her name to Rowan in January of February of 2019 because she felt it was more masculine (*Id* at pgs. 98-99). Plaintiff became upset and anxious if she was misgendered (identified as a female by her teacher or peers) or called by her female name, Bella (*Id* at pg. 100). Over the course of 2019 plaintiff's feeling about wanting top surgery intensified to the point of telling Dr. Einhorn, her mother, and others she would kill herself if she did not have the surgery (*Id* at pgs. 103-104,

106, 111, 117). Plaintiff testified she told her mother if she did not have top surgery she "would have no quality of life," she "would want to die," and would hurt herself until she got it (*Id* at pg. 108).

19. The plaintiff was well-versed, through her own research, on the type of top surgery she wanted (*Id* at pgs. 124-127). She testified she did not think "the lollipop method" of performing surgery worked because it would leave excess skin and she did not want to have a revision surgery (*Id* at pgs. 125). She testified Dr. Chin advised her the alternative would leave more scars (*Id*). After being informed of the risks regarding scarring, and with the potential need for revision surgery to remove excess skin and tissue, Plaintiff testified she ultimately consented to Dr. Chin performing the surgery using the lollipop method (*Id*). Plaintiff testified, "I already did the research. So I knew about the excess skin" (*Id* at pg. 126).

20. Plaintiff's top surgery was originally scheduled for December 4, 2019, but was re-scheduled to December 16, 2019 (*Id* at pg. 128). Plaintiff testified she was frustrated and anxious that the surgery was postponed (*Id* at pg. 130).

21. The plaintiff's mother, who was present for all pre-operative consultations with Dr. Chin, and was, thus, present for the informed consent discussions, consented to the surgery and signed the informed consent form because her daughter was a minor at the time of surgery (*Id* at pgs. 149-152, 156-157, 196-197).

22. The plaintiff's mother corroborated her daughter's testimony that she advised her she would kill herself if she did not have top surgery (*see* Transcript of EBT Testimony of Claire Deacon at pgs. 68-70, 108, 110, 123, 141-143). Ms. Deacon also testified that her daughter told her, "I feel like I am in the wrong body" (*Id* at 109). She further testified Dr. Einhorn convinced her top surgery would be "life preserving" for her daughter (*Id* at pg. 113). Her daughter wrote her a letter stating she needed the surgery to feel "happy and whole" (*Id* at pg. 116). Her daughter told her, "I need to do this [have top surgery]"…I am a male, I'm male" (*Id* at pg. 124). Ms. Deacon testified her daughter, "clearly she is thinking I am a male" (*Id* at 124). Mrs. Deacon further testified that in filling out a questionnaire for The Pride Center she wrote her daughter identified as a "trans male" (*Id* at pg. 133). Mrs. Deacon further testified, as noted above, her daughter wanted to be a male at the end of age 14, going into age 15, which would be well over a year before Dr. Chin's surgery (*Id* at pg. 155). Ms. Deacon testified that "the onus was on him," meaning Dr. Einhorn, because he convinced her that her daughter needed the surgery or she would commit suicide, and not on Dr. Chin (*Id* at 160, 119-120).

23. Dr. Chin performed top surgery—a bilateral short scar breast reduction, otherwise known as a lollipop breast reduction—on plaintiff on December 16, 2019 (*see* Dr. Chin's operative report). This procedure reduces the size of breasts while reshaping and lifting them. The procedure involves making small incisions around

the areola and a vertical incision down the underside of the breast, forming a lollipop shape. This technique reduces the amount of scarring compared to traditional breast reduction procedures. This technique is also nipple-sparing.

24. The plaintiff was seen in follow up by Dr. Chin on December 20, 2019. She reported occasional pain in the left breast. Examination showed no signs of infection, viable nipples, and that she was healing well. Drains placed during the procedure were removed. Dr. Chin recommended that she use a tight garment for compression.

25. On December 26, 2019, the plaintiff's mother contacted Dr. Chin's office to report a new bruise had formed under the left breast. She was advised to keep firm compression and use ice. Four hours later, she called again about swelling and stiffness of the left chest. That evening, she brought her daughter to urgent care with concerns of increased swelling on the left side. There were no clinical signs for an abscess or an infected hematoma. The plaintiff was advised to continue wearing the compression shirt and monitor for any signs of infection, including redness, pain or fever.

26. The plaintiff followed-up with Dr. Chin on January 9, 2020. His examination showed a well healing incision, nipples that were viable and sensate, and significantly decreased swelling. It was felt the plaintiff was progressing well.

27. The plaintiff returned to Dr. Chin on June 3, 2020 with a chief complaint of scarring after surgery. Dr. Chin noted, "Overall, he is really happy, but he has little bit of excess tissue on the left lower breast and on the right side, the nipple was little low in position and there are scars wide in the inferior vertical portion as well." Examination showed a scar on the right lower aspect of the incision. On the left, there was also a little skin redundancy in the right upper portion of the nipple areolar incision and on the left lower quadrant of the breast there was some excess tissue as well. Dr. Chin felt this could be addressed with scar revision on the right and smart liposuction on the left. He wanted to give the plaintiff more time to heal and instructed her to return in September.

28. At the September 15, 2020 office visit, the plaintiff expressed concern due to excess skin at the right supraareolar area. On the left breast, she had some additional breast tissue as well. Examination by Dr. Chin revealed a little bit of excess tissue in the right supraareolar area and the left inferior breast. Dr. Chin's impression was, "Pretty good result after breast reduction surgery, but we could remove more skin with a periareolar incision on the right breast as well as removal of some more breast tissue on the left breast." This was plaintiff's last visit to Dr. Chin.

29. The plaintiff was seen by surgeon Laurel Chandler, M.D. on October 20, 2020. Plaintiff reported being dissatisfied with the surgery performed by Dr. Chin. She expressed "feeling that not all of the breast tissue and skin were excised." Dr. Chandler noted, "The patient has been living as a male for the past 2 years" (*see* Records of Dr. Chandler).

30. On exam, Dr. Chandler noted bilateral viable nipples. The right nipple was slightly higher than the left. There were healed vertical breast reductions scars and periareolar scars. There was some bilateral excess skin, more so on the left than the right. There was also some bilateral excess periareolar skin, more so on the right. Finally, there was some extra breast tissue on the medial aspect of the right breast and a small amount of breast tissue from the left medial breast. The plan was a revision surgery with excision of tissue, which was performed in January of 2021. Dr. Chandler's records note the plaintiff was happy with the final result.

31. The plaintiff testified that, overall, she was happy with the results of Dr. Chin's surgery (*see* Transcript of EBT Testimony of Plaintiff at pg. 142).

32. The plaintiff testified she did not begin to regret the top surgery in order to transition from a female to a male until late 2022, and she began to de-transition in December 2022 – January 2023, at which time she reverted back to using she/her female pronouns (*Id* at pg. 167). From at least one year before Dr. Chin's surgery, up until three years after Dr. Chin's surgery, the plaintiff happily identified as and

lived as a male.

Expert Medical Opinion

33. It is my opinion, to a reasonable degree of medical certainty, Dr. Chin and CareMount Medical, P.C., did not deviate from the standards of care in rendering treatment to the plaintiff at any point in time.

34. Dr. Chin appropriately carried out his role as the plaintiff's plastic surgeon in performing top surgery. It was the role of the plaintiff's psychologist, here Dr. Einhorn, to clear the plaintiff for top surgery. Dr. Einhorn cleared plaintiff for top surgery by providing a letter, presented to Dr. Chin, which supported the plaintiff's desire to undergo top surgery.

35. It is my opinion, to a reasonable degree of medical certainty, plaintiff's allegation that the top surgery was contraindicated and should not have been performed by Dr. Chin because the plaintiff did not have gender dysmorphia is without merit. A licensed psychologist, co-defendant, Dr. Einhorn, cleared the plaintiff for surgery, referred her to Dr. Chin to perform the surgery and provided a letter supporting the surgery. Although his letter of support states the diagnosis as body dysmorphia, Dr. Einhorn clearly described in his letter a patient with gender dysmorphia. Dr. Einhorn's letter states that he was treating the plaintiff for 2 1/2 years, and for over a year prior to surgery the plaintiff felt transgendered and "much more comfortable being identified as a male." The letter states plaintiff had anxiety

when looking in the mirror and seeing her breasts while she dressed, plaintiff struggled with being misgendered by peers and staff at school, plaintiff's ongoing dysmorphia was a barrier to treatment of phycological issues, plaintiff was wearing a binder in order to have a flat chest and appear masculine, plaintiff wore over-sized clothing in an attempt to hide her breasts, plaintiff was extremely anxious about being "outed", and gave as an example a female peer accidentally bumping into her and plaintiff being anxious that her peer may have felt her breasts. Dr. Einhorn ends his letter by stating, "Given the above, I am in support of Rowan undergoing top surgery as I believe it would help him present to others as he wishes to." Dr. Einhorn's letter clearly documents that the plaintiff had gender dysmorphia and it was not a deviation from the standard of care for Dr. Chin to come to this conclusion and rely on Dr. Einhorn's letter, alone, as an indication for surgery. It was, therefore, reasonable for Dr. Chin to believe the plaintiff had gender dysmorphia based upon Dr. Einhorn's letter.

36. Further, Dr. Einhorn testified at his deposition his belief that the plaintiff did, indeed, have gender dysmorphia and he listed the diagnosis as body dysmorphia for insurance/billing purposes (*see* Transcript of EBT of Dr. Einhorn at pgs. 69, 136). Given Dr. Einhorn's testimony, had Dr. Chin called Dr. Einhorn prior to surgery, Dr. Einhorn would have told him the diagnosis was gender dysmorphia.

It was appropriate, and in accordance with the standard of care, for Dr. Chin to defer to Dr. Einhorn in this regard.

37. It was perfectly appropriate for Dr. Chin to defer to Dr. Einhorn's expertise and medical judgment as a licensed psychologist that top surgery was indicated since Dr. Einhorn was the appropriate specialist, through his education and training, to come to this conclusion. In fact, the standard of care mandated that Dr. Chin defer to Dr. Einhorn. Dr. Chin did not deviate from standards of care in relying upon the competency, medical opinion and plan of care established by Dr. Einhorn.

38. However, Dr. Chin went above and beyond the standard of care in corroborating that the plaintiff did indeed have gender dysmorphia. On the first visit on October 15, 2019, in the presence of the plaintiff's mother, who testified Dr. Chin would not have even scheduled an appointment if she was not present, Dr. Chin elicited from plaintiff that she wanted double mastectomies and to "undergo gender reassignment surgeries in order to align himself sexually." When asked how long she felt that way, plaintiff advised Dr. Chin for 3-4 years. She also advised Dr. Chin she had the support of her parents. Plaintiff also advised Dr. Chin she has gone through a lot of psychological anguish in trying to transition. Dr. Chin noted the plaintiff did extensive research into how top surgery is performed and the manner in which she thought she wanted it performed. All of the above corroborated that the plaintiff was gender dysmorphic. Dr. Chin further acted in accordance with and

beyond the standard of care by not scheduling surgery after this first visit, and scheduled a second pre-operative visit to allow plaintiff to ruminate as to whether she really wanted top surgery.

39. It is also my opinion, to a reasonable degree of medical certainty, the plaintiff's and the plaintiff's mother's testimonies establish that plaintiff had gender dysmorphia at the time of top surgery and for a sufficient amount of time prior thereto. Thus, it was not a deviation from the standard of care for Dr. Chin to perform top surgery. I have the expertise to render this opinion because I perform, an average, two top surgeries per month and have performed over 100 top surgeries over the past four years. I work closely with mental health professionals in treating these patients, corroborate that my own patients are gender dysmorphic before performing top surgery and am fully familiar with the elements of gender dysmorphia.

40. The plaintiff's testimony established she had gender dysmorphia in that she testified:

- She was 12 or 13 years old when she first told a psychologist that she sometimes felt like a boy;
- Menstruation was "anxiety provoking" and it was due to "a lot of trauma" as a result of "having a female body;"
- In mid-October/early November of 2018 the plaintiff changed her name from Isabella Basile, to Gabriel ("Gabe") because it was masculine;

●In December of 2018, one year before Dr. Chin's surgery, she decided to wear a binder to appear more masculine;
●She wore the binder until shortly before top surgery even though it was painful to wear and she risked breaking her ribs;

●In late November of 2018, she also cut her hair shirt to appear more masculine;

●She advised Dr. Einhorn she wanted to transition in late November of 2018;

●During this conversation she told Dr. Einhorn she felt like a boy;

●Plaintiff confirmed she started to feel like a boy in the fall of 2018;

●She changed her name to Rowan in January of February of 2019 because she felt it was more masculine;

●She became upset and anxious if she was misgendered (identified as a female by her teacher or peers) or called by her female name, Bella;

●Over the course of 2019 her feeling about wanting top surgery intensified to the point of telling Dr. Einhorn, her mother, and others she would kill herself if she did not have the surgery;

●She told her mother if she did not have top surgery she "would have no quality of life," she "would want to die," and would hurt herself until she got top surgery

41. The plaintiff's mother's testimony established her daughter had gender dysmorphia in that she testified:

●Her daughter first advised her she wanted to be a male "possible at [age] 14…the end of being 14 into 15," which would be well over a year before Dr. Chin's surgery;

●Her daughter told her she would kill herself if she did not have top surgery;

- Her daughter told her, "I feel like I am in the wrong body;"

- Her daughter wrote her a letter stating she needed the surgery to feel "happy and whole;"

- Her daughter told her, "I need to do this [have top surgery]"…I am a male, I'm male;"

- She felt her daughter was clearly thinking "I am a male;"

- She identified her daughter as a "trans male" on a questionnaire for The Pride Center.

42. Further, it is my opinion, to a reasonable degree of medical certainty, the fact that plaintiff testified she was happy with the result of Dr. Chin's surgery, underwent additional surgery to remove more breast tissue after Dr. Chin's surgery to be more masculine, which she was also happy with, and did not want to de-transition back to female until December 2022 – January 2023, establishes she was indeed gender dysmorphic at the time of Dr. Chin's surgery because she lived happily as a male for a full three years *after* his surgery.

43. Plaintiff also alleges Dr. Chin should not have performed top surgery without plaintiff first trying hormone therapy. This allegation is without merit. The plaintiff testified that she was against hormone therapy. It is my opinion, to a reasonable degree of medical certainty, that hormone therapy is not a prerequisite or a contraindication for top surgery. Dr. Chin testified that 20% of patients who have top surgery undergo hormone therapy. We routinely offer top surgery to an

adolescent who is not taking hormone replacement. Forcing a patient to undergo hormone therapy prior to top surgery is not the standard of care.

44. Plaintiff alleges Dr. Chin improperly and incorrectly performed top surgery by utilizing an improper surgical technique, and by not removing enough tissue and skin. These allegations are also without merit. Dr. Chin performed a bilateral short scar breast reduction, otherwise known as a lollipop breast reduction, on December 16, 2016. This is a recognized surgical technique and is used to reduce scarring and also preserve the nipple by leaving enough skin and breast tissue behind to ensure a proper blood supply to the nipples so they do not necrose. It is my opinion, to a reasonable degree of medical certainty, Dr. Chin removed the appropriate amount of breast tissue and skin during his surgery. Further, it is my opinion, to a reasonable degree of medical certainty, that Dr. Chin gave the plaintiff and her mother proper informed consent prior to surgery. Dr. Chin notes in his chart that he discussed the risks of the procedure on two occasions with the plaintiff and her mother on October 15, 2019 and November 4, 2019. He advised both of the "need for future surgery" and the possibility of a second procedure for "further skin excision." The plaintiff acknowledged, after the informed consent discussion with Dr. Chin, she consented to his surgical technique, and that she "knew about the excess skin." The plaintiff's mother was present for all informed consent discussions and executed the informed consent. It is my opinion, to a reasonable degree of

medical certainty, Dr. Chin gave proper informed consent in that he discussed surgical technique with the plaintiff and her mother, advised them of the risks and benefits, particularly excess breast tissue and skin and the need for future revision surgery to remove same, and plaintiff acknowledged she knew of the risk of this prior to surgery.

For the foregoing reasons, defendants are entitled to summary judgment.

Dated: New York, NY
October 29, 2024

JOSEPH M. SERLETTI, M.D.

Sworn to before me this
29 of October 2024

NOTARY

KRIS A. GALLAGHER
Commission # 2418766
Notary Public, State of New Jersey
My Commission Expires
March 21, 2027